



South Carolina House of Representatives

# Legislative Update

David H. Wilkins, Speaker of the House

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STATE DOCUMENTS

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## MAJOR ISSUES FROM THE 2003 LEGISLATIVE SESSION

This document summarizes many of the key issues considered by the General Assembly this year. Please note that some of these issues are addressed in more than one bill. In those instances, we have highlighted bills which have made the most progress towards passage. Some major bills which have been introduced this year are not included in this document because, at this point in the 2003 legislative year, their progress towards passage makes it more likely that they will be considered next year.

This document will be revised and expanded weekly as the status of major bills changes. This report highlights legislative activity through *Thursday, May 29, 2003*. It is a guide to, not a substitute for, the full text of the legislation summarized. Bill summaries in this document are prepared by staff of the South Carolina House of Representatives and are not the expression of the legislation's sponsor(s) or the House of Representatives. The summaries are strictly for the internal use and benefit of members of the House of Representatives and are not to be construed by a court of law as an expression of legislative intent.

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# APPROPRIATIONS

## THE 2003-2004 GENERAL APPROPRIATION BILL

The House and Senate approved differing versions of H.3749, the State budget plan for Fiscal Year 2003-2004. A House-Senate conference committee was appointed late Wednesday, May 28, to work out the differences. That committee immediately began its work and presented a report to the House and the Senate on Thursday morning, May 29. The House approved the report. However, the Senate ruled the report out of order. The Conference Committee is scheduled to meet again on June 2. A summary of the Committee's report will be provided when the report is approved by both the House and the Senate.

*STATUS: H.3749, the State Appropriation Bill for 2003-2004, is being considered by a House-Senate conference committee.*

## LIMITATION ON STATE APPROPRIATIONS

The House of Representatives approved H.3424, a bill providing for new state appropriations limitations, and joint resolution H.3496 proposing the pertinent amendments to the government appropriations provisions in the State Constitution. In place of the existing limitation on state appropriations, the legislation provides for a new limit that would be the lesser of 106% of base-year appropriations, or base-year appropriations increased by a percentage formula based on the State's growth in population and any increases in the consumer price index. The limit would be effective beginning with fiscal year 2005 appropriations. The legislation also establishes a spending limit reserve fund, comprised of all general fund revenues accumulated in a fiscal year in excess of the appropriations limit, and available for appropriation by the General Assembly in the year following the close of the applicable fiscal year. The legislation specifies purposes for which these funds may be appropriated. The legislation provides that, notwithstanding the requirement for passage of constitutional amendments and subsequent ratification to make these provisions effective, the General Assembly shall conform to these provisions beginning with fiscal year 2005 appropriations, to the extent appropriations allowed under the bill do not exceed the then applicable spending limit.

*STATUS: H.3424 and H.3496 were approved by the House and are pending consideration in the Senate Finance Committee.*



## NO PART II's IN 2003-2004 HOUSE BUDGET

The House approved H.3627, a House Resolution expressing the sense of the body that no permanent law should be included in the General Appropriations Bill for fiscal year 2003-2004, when the bill is under consideration in the House.

*STATUS: H.3627, a House Resolution, was approved.*

# BUSINESS/ECONOMIC DEVELOPMENT

## AQUACULTURE ENABLING ACT

The House and the Senate approved H.3950, a comprehensive bill known as the *Aquaculture Enabling Act*, and the bill has been enrolled for ratification. "Aquaculture" is defined in the bill as controlled cultivation of an aquatic species in confinement, and "aquaculture business" is defined as involvement in aquaculture for a commercial purpose. The bill provides that the Department of Natural Resources (DNR) has regulatory authority for permitting and licensing pertaining to aquaculture and aquaculture businesses and DNR has authority for enforcement as it affects the public waters of South Carolina. The provisions of the bill do not apply to any saltwater species. The bill provides that applicants for permits or licensure may be required to obtain additional federal or state permits required under current statutes and regulations. The bill includes, but is not limited to, provisions relating to: out-of-state aquaculturists who buy or sell in the state; common carriers of aquaculture products; persons buying, receiving, or selling out-of-state aquaculture products; freshwater gamefish and regulated aquaculture products produced under permit as authorized in the bill; prohibition against engaging in aquaculture for a commercial purpose, except as allowed in the bill, and provisions for violation of this prohibition; circumstances under which a person must obtain an annual aquaculture permit from DNR and provisions and procedures related to various aquaculture permits; conditions which DNR must consider before issuing a permit and before setting permit conditions; provisions, including punishment by fines or imprisonment, for persons who fail to acquire an aquaculture permit or register an aquaculture facility; establishment of magistrate's court jurisdiction for criminal cases arising from the provisions of the bill; and provisions relating to taking of freshwater nongamefish other than shad, herring, and sturgeon.

The bill also includes a provision which makes it unlawful to set or use blue crab traps for commercial purposes in specified waters of Georgetown County.

*STATUS: H.3950 was approved by the House and Senate and has been enrolled for ratification.*



## **AT-WILL EMPLOYMENT**

The House of Representatives approved and sent to the Senate H.3448 pertaining to at-will employment. This bill revises South Carolina's at-will employment doctrine in light of recent court rulings under which employers who use employee handbooks, even with conspicuous disclaimers and employee acknowledgements, may inadvertently create a contract of employment that replaces the intended at-will employment relationship. Under the bill, no handbook, policy, procedure, or other document issued by an employer or its agent may form an express or implied contract of employment, unless: (a) the contract is in writing; (b) the contract is signed by the employee and an authorized agent of the employer; and (c) the contract expressly provides that the parties intend to alter their at-will employment relationship. The legislation applies to both public and private employment. Under an at-will employment relationship, any employment for an indefinite term is terminable by either the employee or the employer for any reason or for no reason without incurring liability for wrongful discharge. Under at-will employment, liability for wrongful discharge is incurred if the employee is discharged in a manner that discriminates against race, age, gender and other categories protected under the state's public policy.

*STATUS: H.3448 passed the House on February 5, 2003, and was sent to the Senate where it has been amended and given second reading.*

## **BROADBAND SERVICE EXEMPTED FROM REGULATION BY THE PUBLIC SERVICE COMMISSION**

The General Assembly passed H.3344 a bill providing that broadband service is exempt from regulation by the public service commission. The legislation exempts from PSC regulation broadband service which is defined as any service that is used to provide access to the Internet and consists of the offering of: (a) a capability to transmit information at a rate that is generally not less than one hundred ninety kilobits per second in at least one direction; or (b) any service that combines computer processing, information storage, and protocol conversion to enable users to access Internet content and services.

*STATUS: Having passed the General Assembly, H.3344 was signed into law by the Governor on March 12, 2003, (Act No. 6).*

## **DEPARTMENT OF COMMERCE EXPENDITURES**

(See summary under STATE/LOCAL GOVERNMENT)

## **HEARING AID SPECIALISTS**

(See summary under Health/Elderly Issues)

## LIFE SCIENCES ACT

The Senate and the House approved differing versions of **S.560**, the South Carolina Life Sciences Act. As passed by the Senate, the bill defines a Life Sciences Facility as a business engaged in pharmaceutical, medicine, and related laboratory instrument manufacturing, processing, or research and development. Included in this definition are specified North American Industrial Classification Systems, NAICS Codes published by the Office of Management and Budget of the federal government. The bill amends the Enterprise Zone Act to add Life Sciences, with \$100 million invested, and creation of 200 new full-time jobs with an average compensation of at least one hundred fifty percent of annual *per capita* income in South Carolina. The bill allows employee relocation expenses to qualify for reimbursement with job development credits. The bill allows for waiver by the Coordinating Council of county limits on job development credits for such a facility. The bill limits the availability of incentives to Life Sciences projects creating jobs and making investments after June 30, 2004 and before July 1, 2008. For qualifying facilities, the bill allows the Department of Revenue to negotiate an agreement regarding payment of taxes, not to exceed fifteen years. The bill increases from 10% to 15% per year the depreciation for "clean rooms." The bill adds depreciation for Life Sciences machinery and equipment at 20% per year. The bill provides that depreciation for clean rooms must be for inducement agreements after September 1, 2003. The bill allows Life Sciences projects investing \$100 million and creating 200 jobs at twice the state *per capita* to qualify for funding under the Economic Development Bond Act.

On May 22, the House amended and approved the Senate-passed bill and returned the bill to the Senate.

*STATUS: **S.560** was approved by the Senate, as summarized above. The bill was amended and approved by the House on May 22 and returned to the Senate.*

## LIVESTOCK OR POULTRY STANDARDS-HOG FARMS

(See summary under State/Local Government)

## PREDATORY LENDING

The General Assembly passed **S.438**, the South Carolina High-Cost and Consumer Home Loans Act. This legislation targets certain practices commonly referred to as predatory lending. The legislation:

- Defines "high-cost" loan as an interest rate that exceeds T-Bill + 8% on first mortgages or 10% on subordinate loans AND/OR points and fees equal to or greater than 5% of total loan amount if greater than \$20,000, or 8% or \$1,000 of the total loan amount if loan is less than \$20,000, and 3% of the

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total loan amount in non-real estate manufactured home transactions - loan greater than \$20,000.

- Prohibits certain provisions, such as, negative amortization, interest increase, balloon payments, and acceleration.
- Requires additional broker disclosure to the borrower on profits earned and provides that the lender must reasonably believe the borrower can repay the debt.
- Provides for mandatory counseling with written certification from a State Housing Finance and Development Authority approved counselor.
- Prohibits financing of credit life - effective date January 2005. However, credit life will be included in the "points and fees" until January 2005.
- Prohibits charging fees on an existing loan being refinanced with the same noteholder.
- Prohibits financing of points and fees exceeding 2.5% of total loan amount.
- Regulates payments from the proceeds to a contractor.
- Prohibits flipping within 42 months of the last financing or when the refinancing has no reasonable, tangible net benefit. Additionally, provides presumptions.
- Parity for junior liens. Currently, points and fees are considered earned immediately on first mortgages only. This will allow points and fees on second mortgages to be considered earned immediately.
- Provides for remedies and penalties - allows for actual damages, pecuniary penalties, and rewriting the mortgage in the borrowers favor.
- Provides the lender a good faith safe harbor for correcting any errors within 45 days after discovery, in favor of the borrower.
- Provides that a loan agreement may not identify a state other than South Carolina as choice of law, unless allowed by federal law.
- Places a duty of utmost care, honesty and loyalty on mortgage brokers for every transaction. Penalties (\$1500 - 7500)
- Prohibits counties and municipalities from enacting ordinances or laws regarding consumer or high-cost home loans.
- Prohibits prepayment penalties for loans less than \$150,000.



- Provides consumer protection with regard to title lenders and requires additional disclosures for credit and purchase money sales regarding manufactured homes.

Title lenders: Provides a definition of a short-term vehicle secured loan, limitations on a title loan period (original period must be at least a month and the renewal periods cannot exceed 240 days or be more than the original term), limits interest accruing after 6<sup>th</sup> renewal period and provides the borrower 6 equal installments to satisfy the loan, the lender must have a good faith belief of the borrower's ability to repay the loan, cannot make a loan more than the fair market value of the vehicle, and the sole remedy for the lender, except in the event of fraud, is repossession and the sale of the vehicle – surplus going to the borrower. No fees may be charged, unless government entity's charge.

Manufactured Homes: Provides for additional disclosure for manufactured home purchases at least 2 days prior to closing, on credit sales and purchase secured by real estate. Additionally, prohibits class actions and provides the lender a good faith safe harbor for correcting any errors within 60 days after discovery, in favor of the borrower.

- Amends the Consumer Protection Code to enact an objective standard for unconscionability.

*STATUS: The House and Senate adopted the conference committee report on S.438 on May 15, 2003, and the bill was ratified on May 28.*

## RESEARCH UNIVERSITIES RESTRUCTURING ACT

The House approved H.3899, the Research Universities Restructuring and Infrastructure Act. This bill revises current provisions in order to allow South Carolina's research universities - the University of South Carolina, Clemson University, and the Medical University of South Carolina - to focus on research and development and to focus on their role in a knowledge-based economy.

H.3899 creates and provides for a ten member South Carolina Research Oversight Council (the Council) to provide oversight and to coordinate the affairs of the three research universities. These institutions would no longer be members of the Commission on Higher Education. Funds for the necessary technical, administrative, and clerical assistance and other expenses of the Council would be carried in the annual appropriation act. The sum appropriated to fully fund the Council would be divided evenly among the three universities.

H.3899 enacts the "State General Obligation Economic Development and Research University Bond Act" which, among other things, increases the limitation on general obligation debt from five percent to five and one-half percent, with the additional debt service capacity to provide infrastructure and facilities for economic

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development within the State and the advancement of the research universities, as provided in the bill.

H.3899 includes other provisions intended to give these Research Universities the flexibility and responsibility to assume a greater role in the State's economic development. These provisions include, but are not limited to: removal of the cap for federal/other funded employee bonus pay; provision of graduate assistant health benefits; allowing establishment of research grant positions without regard to the university's authorized allocation of FTE's; and, increasing the maximum allowed number of education fee waivers at these universities from 2% to 4% of the student body.

*STATUS: H.3899 was approved by the House and is pending consideration by the Senate Finance Committee.*

## UNAUTHORIZED CHANGE OF UTILITY PROVIDER PROHIBITED

The House passed and sent to the Senate H.3080, a bill prohibiting an unauthorized change of utility provider, a practice commonly referred to as "slamming." The bill provides that a utility (gas, heat, water, sewerage collection and disposal, street railway service, telephone, and electrical) may not submit a change request for a customer's utility provider without the customer's authorization. Techniques approved by state and federal agencies must be used when changing a customer's utility provider. Under the legislation, a violator of the anti-slamming provisions is liable to the customer for all charges incurred by the customer, in excess of those normally incurred through his designated provider, during the period of the unauthorized change. A telephone utility that violates the provisions is liable as provided under Federal Communications Commission guidelines. A utility that willfully, knowingly, or repeatedly violates these anti-slamming provisions is subject to a fine of not less than two thousand dollars nor more than ten thousand dollars for each violation. The fines collected are to be collected and retained by the Public Service Commission.

*STATUS: H.3080 passed the House on April 23, 2003, and was sent to the Senate where it has been referred to the Judiciary Committee.*

## VENTURE CAPITAL INVESTMENT ACT

The House approved H.3900, the "Venture Capital Investment Act Of South Carolina." This bill establishes within the Department of Commerce a fund governed by a seven-member board appointed by the Speaker of the House, the President *Pro Tempore* of the Senate, and the Governor, to promote investment in knowledge-based technology companies. The fund is required to seek capital commitments to the fund in accordance with procedures approved by the State Budget and Control Board. These proceeds would be used to make investments



with venture capital investors. The venture capital companies would then invest those monies in qualified companies in South Carolina. The bill defines "venture capital" as equity, near equity, and seed capital financing including, without limitation, early stage research and development capital for startup enterprises, and other equity, near equity, or seed capital for growth and expansion of entrepreneurial enterprises. If the fund has insufficient monies to repay these funds, the fund may issue tax credit certificates used to offset state bank and insurance premium tax liabilities. No more than twenty million dollars in tax credit certificates can be redeemable in any one year, and no more than one hundred million dollars may be issued and outstanding at any one time. The bill provides that the fund may retain an amount annually, not to exceed one percent of the capital commitments received, for expenses incurred by the fund. The bill's stated intent is to increase the availability of equity, near equity, or seed capital of at least one hundred million dollars for emerging, expanding, relocating, and restructuring enterprises in South Carolina, so as to strengthen the State's economic base and to support the State's economic goals. The bill is also intended to address long-term capital needs of small-sized and medium-sized firms, to address the needs of micro enterprises, to expand availability of venture capital, and to increase international trade and export finance opportunities for South Carolina based companies.

*STATUS: **H.3900** was approved by the House and is pending consideration by the Senate Finance Committee.*

## **YOUTH ACCESS TO TOBACCO PREVENTION ACT**

(See summary under CRIME/LAW ENFORCEMENT)

# **CRIME/LAW ENFORCEMENT**

## **DRIVING UNDER THE INFLUENCE: BLOOD ALCOHOL CONTENT LIMITS DECREASED TO 0.08%**

The House of Representatives and the Senate have passed different versions of **H.3231**, a bill that reduces blood alcohol content limits in driving under the influence provisions and other provisions relating to blood alcohol limits. The legislation revises South Carolina law in light of the National Highway Traffic Safety Administration's requirement that DUI blood alcohol limits be reduced to 0.08 percent. The legislation revises the legal presumptions that can be made according to blood alcohol concentrations in DUI provisions. In establishing conclusive proof that the driver was not under the influence of alcohol, the legislation reduces the alcohol concentration from 0.05 to 0.04 percent. The legislation establishes that an alcohol concentration greater than 0.04 and less than 0.08 percent (reduced from 0.05 to 0.10 percent) does not give rise to an inference of being under the influence of alcohol, but that other evidence can be considered with this evidence



to establish guilt or innocence. This legislation reduces the alcohol concentration required to make an inference that a person is under the influence, from 0.10 to 0.08 percent. The legislation revises the DUI per se provisions by making it unlawful for a person with an alcohol concentration of 0.08 percent (reduced from 0.10 percent) to drive a vehicle. The legislation also removes a provision that prevents DUI per se provisions from applying to cases arising out of a roadblock or license checkpoint. The legislation adds a language that provides that a person charged with a DUI per se violation must have been given notice of intent to prosecute under the DUI per se provisions not later than 60 days after arrest. The legislation also makes all pertinent adjustments to apply the new, reduced blood alcohol concentration limits to provisions pertaining to implied consent for blood alcohol testing, driver's license suspensions for DUI matters, the application of automobile insurance penalties, the operation of watercraft while under the influence, and the use of firearms while under the influence.

*STATUS: **H.3231** passed the House on March 25, 2003. On May 29, the Senate returned the bill to the House with amendments.*

## **PRIMARY ENFORCEMENT OF SEAT BELT PROVISIONS**

The House approved H.3128, a bill providing for primary enforcement of seat belt laws. This bill authorizes primary enforcement of seat belt and child restraint requirements by eliminating current statutory language which provides that a law enforcement officer must not stop a driver for a seat belt or child restraint violation in the absence of another violation of the motor vehicle laws. Under the legislation, a law enforcement officer must not stop a driver for a seat belt or child restraint violation except when the officer has probable cause for such a violation based on his clear and unobstructed view of a driver or an occupant of the motor vehicle who is not wearing a safety belt or is not secured in a child restraint system as required. The legislation expands the provision under which a vehicle, driver, or occupant in a vehicle may not be searched solely because of a seat belt/child restraint violation, by adding "nor may consent to search be requested." The bill provides that a conviction for a seat belt or child restraint violation must not be reported to the offender's motor vehicle insurer.

The bill was reported out of the Senate Transportation Committee on May 27, with a majority favorable, minority unfavorable report.

*STATUS: **H.3128** was approved by the House and was reported out of the Senate Transportation Committee with a majority favorable, minority unfavorable report. The bill is currently pending second reading on the Senate calendar with two senators listed as desiring to be present. (Also, the House Education and Public Works Committee amended **S.356**, a bill which as passed by the Senate concerned hearing impaired drivers, to include the seat belt primary enforcement provisions. **S.356** is on the contested calendar of the House, pending second reading.)*

## TRAFFIC LAW ENFORCEMENT DATA

The Senate passed and sent to the House of Representatives **S.424**, a bill requiring law enforcement agencies to collect and report certain information about those involved vehicle traffic enforcement stops and certain complaints regarding those stops. The information could be used to address concerns over whether patterns of racial profiling exist in the state with regard to vehicle traffic law enforcement. The legislation provides that agencies which employ law enforcement officers to enforce the traffic laws of this State, including, but not limited to, the Department of Public Safety, sheriff's departments, and municipal police departments, must collect and maintain the following information regarding vehicle traffic enforcement: (1) the number of drivers stopped for vehicle traffic enforcement where a warning or citation was issued; (2) the identifying characteristics of each driver stopped, including his race or ethnicity, age, and gender; (3) the alleged traffic violation that led to the stop; (4) whether the vehicle, personal effects, driver, or any passengers were searched; (5) the basis for the search; and (6) the race or ethnicity of the officer. This information is not required to be collected in connection with driving under the influence checkpoints or other types of roadblocks, vehicle checks, or checkpoints that comply with the laws of this State and with the State and United States Constitutions, except when warnings or citations are issued, or searches, seizures, or arrests occur. The information required to be collected must be reported to the Speaker of the House of Representatives and the President Pro Tempore of the Senate by the first day of each legislative session for distribution to the General Assembly. The Department of Public Safety must report annually to the General Assembly the number of licensed drivers in each county as of December thirty-first of the previous year. The number of licensed drivers must be categorized by age, gender, and race or ethnicity.

The legislation also provides that an agency which employs law enforcement officers to enforce the traffic laws of this State, including, but not limited to, the Department of Public Safety, sheriff's departments, and municipal police departments, must compile, annually publish, and make available to the public in a report, the following information regarding certain formal complaints by members of the public against officers of the agency: (1) the number of complaints received by type and location of incident by county; (2) the gender, age, and race of the complainant, when known, and the gender, age, and race of any officer involved in the complaint; (3) the disposition for each complaint including, but not limited to, whether the complaint was: (a) exonerated. The alleged incident did occur, but the actions of the officer were justified, lawful, and proper; (b) sustained. The investigation disclosed sufficient evidence to prove the allegation; (c) not sustained. The investigation failed to disclose sufficient evidence to clearly prove or disprove the allegation; (d) unfounded. The alleged incident did not occur or there is insufficient information to conduct a meaningful investigation; and (4) the total number of disciplinary actions, including, but not limited to, letters of reprimand, suspensions with or without pay, and dismissals, stemming from each type of sustained complaint. These requirements pertain to any complaint where a signed report regarding vehicle traffic enforcement is received by an agency regarding the conduct of an officer or of an incident, pattern, or practice of conduct that deprives



a person of a right, privilege, or immunity secured or protected by the State or the United States Constitutions or any law of the State. The required annual report on complaints must respect privacy concerns and must not include the name, badge number, or other identifying information regarding officers, complainants, or other participants in a complaint, other than the required information.

The requirements imposed under the legislation would be repealed on July 1, 2007.

*STATUS: **S.424** passed the Senate on May 1, 2003, and was sent to the House of Representatives where it has been referred to the Judiciary Committee.*

## **YOUTH ACCESS TO TOBACCO PREVENTION ACT**

The House of Representatives passed and sent to the Senate **H.3084**, the "Youth Access to Tobacco Act of 2003." This bill revises laws prohibiting the sale of tobacco to underage individuals and establishes new provisions regarding youth access to, and possession of, tobacco products. Under the revised provisions regarding underage tobacco sales provided in the legislation, it is unlawful for a person to sell a tobacco product to an individual who does not present upon demand proper proof of age. Proof of age is not required from an individual who the person reasonably believes to be over twenty-seven years of age. Failure to require identification to verify a person's age shall be used as evidence of knowledge and intentional violation of this provision unless the person knows the individual is at least eighteen years of age. Proof that is demanded, is shown, and reasonably is relied upon for the individual's proof of age is a defense to an action initiated under these provisions. To determine whether a person believes an individual is at least twenty-seven years of age, a court may consider, but is not limited to considering, proof of the individual's general appearance, facial characteristics, behavior, and manners. These provisions do not apply to mail order sales. The bill revises criteria for what will be accepted as proof of age so as to limit it to a driver's license or identification card issued by this state, or a United States Armed Services identification card. The bill requires retail distributors of tobacco products to train their retail sales employees regarding these new procedures. In lieu of other pertinent penalties, a retail establishment that fails to comply with this training requirement must be fined not more than one thousand dollars.

The legislation provides that tobacco products may be accessible only in vending machines located in an establishment: (1) which is open only to persons who are eighteen years of age or older; or (2) where the vending machine is under continuous control by the owner or licensee of the premises, or an employee of the owner or licensee, can be operated only upon activation by the owner, licensee, or employee before each purchase, and is not accessible to the public when the establishment is closed. Individuals performing these duties in vending machine sales are subjected to the legislation's requirements for demanding proof of age. Vending machines that distribute tobacco products in establishments must meet



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these requirements within one hundred twenty days after the effective date of this provision or must be removed.

Under the bill, it is unlawful for an individual less than eighteen years of age to purchase, accept receipt, attempt to purchase, or attempt to accept receipt of a tobacco product, or present or offer to a person proof of age that is false or fraudulent for the purpose of purchasing or possessing a tobacco product. However, a person less than eighteen years of age may be enlisted by local law enforcement agencies to test a community's compliance with this section and to reduce the extent to which tobacco products are sold or distributed to underage individuals when the testing is under the direct supervision of the law enforcement agency and with the individual's parental consent. The bill also authorizes such an individual to be enlisted by the South Carolina Department of Alcohol and Other Drug Abuse Services, or a county alcohol and drug abuse authority to test an outlet's compliance or to collect data for the federally mandated Youth Access to Tobacco Study. The bill provides that it is unlawful for an individual less than eighteen years of age to possess a tobacco product. This provision does not apply to the possession of tobacco products by an individual less than eighteen years of age who delivers tobacco products as a part of his employment responsibilities. A person or individual who intentionally or knowingly violates a provision contained in this legislation either in person, by agent, or in any other way, is guilty of a misdemeanor and, upon conviction, must be punished as follows: (1) for a first offense, by a fine not less than one hundred dollars; (2) for a second offense, which occurs within three years of the first offense, by a fine not less than two hundred dollars; and (3) for a third or subsequent offense, which occurs within three years of the first offense, by a fine not less than three hundred dollars. All fines must be placed in the state general fund and distributed in the following manner: (a) one-half must be distributed to the treasurer of the county in which the conviction occurred; and (b) one-half must be distributed to the county alcohol and drug abuse commission and used for funding youth smoking prevention programs. A violation of a provision of this legislation is triable exclusively in either municipal or magistrate court. Instead of the penalties listed above, a court may require an individual who is less than eighteen years of age who illegally purchases or possesses a tobacco product to perform not less than twenty hours of community service for a first offense and not less than forty hours of community service for a second or subsequent offense. A person who is less than eighteen years of age and who has been convicted of violating a provision of this legislation may have his record expunged upon becoming eighteen years of age if he has paid any fine imposed upon him and successfully completed any court-ordered community service.

*STATUS: **H.3084** passed the House on February 28, 2003, and was sent to the Senate where it has been referred to the Judiciary Committee. The provisions have also passed the House as part of **H.3768**, the South Carolina Health and Human Services Reorganization and Accountability Act.*

# DOMESTIC VIOLENCE/CHILD ABUSE

## CLERGY REQUIRED TO REPORT CHILD ABUSE AND NEGLECT

The House of Representatives approved and sent to the Senate H.3199, a bill that requires clergy to report child abuse and neglect. This bill revises the list of persons required to report child abuse and neglect, so as to include a member of the clergy. The bill requires a priest to make such reports except when the communication is protected by the statutorily prescribed priest-penitent privilege. The Senate has amended the bill so as to specify that the reporting requirements include a Christian Science Practitioner or religious healer.

*STATUS: H.3199 passed the House on February 7, 2003, and was sent to the Senate. On May 22, the Senate amended the bill and gave it second reading.*

## DOMESTIC VIOLENCE PREVENTION ACT

The Senate passed and sent to the House S.477, the "Domestic Violence Prevention Act of 2003". This legislation enhances various penalties for domestic violence offenses and emphasizes offender participation in programs designed to treat batterers.

The legislation adds the offense of criminal domestic violence of a high and aggravated nature to the list of offenses that are considered violent crimes.

The legislation establishes a penalty for a second offense violation of criminal domestic violence where there has been an offense of criminal domestic violence or criminal domestic violence of a high and aggravated nature committed within the previous ten years. Under the bill, the second offense violation is a misdemeanor and subjects the offender to a penalty, upon conviction, of imprisonment for not more than 30 days and a fine of not more than five hundred dollars. The court may suspend all or part of the sentence if the offender completes a program designed to treat batterers.

The legislation establishes a penalty for a third offense violation of criminal domestic violence where there are two previous offenses of criminal domestic violence or criminal domestic violence of a high and aggravated nature. Under the bill, the third offense violation is a misdemeanor punishable with imprisonment for no more than three years with a mandatory minimum term of imprisonment for 90 days. The court may suspend all or part of the sentence, with the exception of the 90-day minimum, if the offender completes a program designed to treat batterers.

The legislation establishes a penalty for a first offense violation of an order of protection. Such a violation is a misdemeanor and the penalty is imprisonment for



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thirty days and a fine of not more than five hundred dollars; however, the court may suspend all or part of the sentence if the offender completes a counseling program. A person found guilty of this provision and criminal domestic violence of a high and aggravated nature must be sentenced under the latter.

An individual who commits a criminal domestic violence offense is guilty of the offense of criminal domestic violence of a high and aggravated nature when one of the following occurs: (1) the person intentionally commits an assault and battery which involves the use of deadly weapon or results in serious bodily injury to the victim; or (2) the person intentionally commits an assault, with or without an accompanying battery, which would reasonably cause a person to fear imminent serious bodily injury or death. A person who violates this provision is guilty of a felony. The court may suspend part of the sentence if the offender completes a counseling program.

The legislation revises the definition of "household member" under criminal domestic violence and protection from domestic abuse provisions so as to eliminate from the definition persons related by consanguinity or affinity within the second degree. The legislation adds to this definition a person under the age of eighteen living in the household, a person who functions cognitively or adaptively under the age of eighteen who lives in the household.

Under the bill, a person charged with a criminal domestic violence offense may not be considered for pre-trial intervention if the offender has been previously convicted of a criminal domestic violence violation or a similar offense in another jurisdiction.

The bill provides that a law enforcement agency must complete an investigation of an alleged criminal domestic violence violation even if the law enforcement agency was not notified at the time the alleged violation occurred. If an arrest warrant is sought, the law enforcement agency must present the results of the investigation and any other relevant evidence to a magistrate who may issue an arrest warrant if probable cause is established.

The bill provides that a law enforcement officer is not required to make an arrest for an alleged criminal domestic violence violation if the officer determines probable cause does not exist after consideration of the specified factors and observance that no physical manifestation of injury is present.

The bill provides that an officer who effects an arrest, by use of a uniform traffic ticket, for a criminal domestic violence violation must subsequently complete and file an incident report within fifteen days of the issuance of the ticket.

*STATUS: **S.477** passed the Senate April 15, 2003, and was sent to the House where it was referred to the Judiciary Committee. On May 28, the Judiciary Committee reported out the bill favorable with amendment.*



## **REPORTING INSTANCES OF CRUELTY TO CHILDREN, VULNERABLE ADULTS, OR ANIMALS**

The House of Representatives approved and sent to the Senate **H.3552**, a bill pertaining to reporting instances of cruelty to children, vulnerable adults, or animals. This bill revises the list of persons required or permitted to report child abuse or neglect, so as to include an officer or agent of the South Carolina Society for the Prevention of Cruelty to Animals or of a society incorporated for the prevention of cruelty to animals and an animal control officer. These individuals are also added to the list of persons required to report abuse, neglect, or exploitation of vulnerable adults. The bill provides that Department of Social Services and Adult Protective Services employees must report known or suspected instances of animal cruelty, fighting, or baiting. The bill provides for immunity from liability for such reporting. The bill provides that any veterinarian or other person may report suspected animal cruelty, fighting, or baiting. The bill provides for immunity from civil and criminal liability for such reporting.

*STATUS: **H.3552** passed the House on April 11, 2003, and was sent to the Senate where it has been referred to the Agriculture and Natural Resources Committee.*

## **EDUCATION**

### **FLEXIBILITY IN SCHOOL FUND TRANSFERS**

**S.375** is a joint resolution which provides that, for fiscal year 2002-2003, all school districts and special schools of this State may transfer revenue between programs to any instructional program with the same funding source and may make expenditures for direct classroom instructional programs and essential operating costs from any state source without regard to fund type with the exception of school building bond funds.

*STATUS: **S.375** was approved by both the House and the Senate and has been ratified (R.21) and signed by the Governor.*

### **RESEARCH UNIVERSITIES RESTRUCTURING ACT**

(See summary under Business/Economic Development)

## SCHOOL START DATE

The House and the Senate approved differing versions of H.3361, legislation which would, among other things, give local school districts the authority to establish school calendars to include beginning and ending dates. A House-Senate Conference Committee was appointed to work out differences between the respective bodies' versions of the bill. To date, the conference committee has been unable to reach a compromise. Many bills which would allow specific localities to determine the starting and ending dates for schools in their respective districts are being considered by the House and the Senate.

*STATUS: The House and the Senate have approved differing versions of H.3361 and the bill is currently being considered in Conference Committee.*

## ELECTIONS

### CAMPAIGN FINANCE

The House of Representatives and Senate have passed different versions of H.3206, a bill that provides for revised campaign finance disclosure requirements, enhanced penalties for campaign practice violations, and revised requirements for lobbyists and lobbyist principals. As passed by the House, these revisions include:

- Disclosure by Political Parties: The bill requires political parties, legislative caucus committees, and party committees to disclose anything of value that is received in excess of a \$500 threshold. This includes all funds received for operating expenses, "party-building" expenses, and other funds commonly referred to as "soft money."
- Required Reporting of Independent Expenditures: H. 3206 adds a "person who makes independent expenditures of \$500 or more during an election cycle for the purpose of influencing the outcome of an elective office" to the group of persons and entities that must file disclosure reports.
- Disclosure for Influencing the Outcome of Elections: The bill further defines the term "influence the outcome of an elective office" for purposes of clarifying who has to file disclosure reports. The revised definition would include campaign slogans or individual words that can only reasonably be interpreted to urge the election or defeat of a clearly identifiable candidate such as "Smith's the One", "Jones 2000", "Smith/Jones", "Jones!", or "Smith-A man for the People!".
- Reporting by Ballot Measure Committees: The bill defines "ballot measure committees" and makes such committees subject to reporting and disclosure



requirements. This definition includes a person or persons who receives contributions or makes independent expenditure totaling \$500 or more during an election cycle for the purpose of influencing the outcome of a ballot measure.

- **Penalty Enhancements:** H. 3206 eliminates the \$500 cap on civil penalties for failure to file disclosure reports. Currently, a person who violates this provision must pay a mandatory \$100 penalty if the report is not filed within 5 days of due date plus \$10 per day after notice is sent to the delinquent filer but only up to a \$500 cap. The bill creates a new penalty for intentional campaign practice violations and certain reporting violations. It adds a fine of up to 500% of the amount of contributions and anything of value that should have been reported to the current penalty of not less than \$5,000 and/or imprisonment for not more than 1 year.
- **Identification by Candidates and Committees:** Currently, candidates, committees or other persons are required to place their name and address on all printed matter that is distributed or posted to voters. The bill revises this provision so as to require the name and address be printed in all capital letters and in twelve-point type.
- **Exploratory Committees:** The bill revises the definitions of "candidate" and "contribution" to apply the Ethics Act to exploratory candidates and committees. The legislation provides that a candidate includes persons exploring whether or not to seek election and a contribution includes anything of value given to a candidate to explore whether or not to seek election.
- **Lobbyists and Lobbyist's Principals:** The bill revises provisions relating to registration fees for lobbyists and lobbyist's principals, raising the fees from \$50 to \$100 dollars. The bill eliminates provisions that allow for the immediate deregistration of lobbyists and lobbyist's principals. Instead, the legislation requires that a lobbyist's and a lobbyist's principal's registration with the State Ethics Commission is valid for the entire calendar year for which the lobbyist/lobbyist's principal is registered and that all pertinent provisions and prohibitions apply for the entire calendar year. The legislation revises the schedule for reporting lobbying activities, providing for two, rather than the current three, reports each year.

The Senate-passed version of the legislation differs in several respects. A conference committee has been appointed to address these differences.

*STATUS: **H.3206** has passed the House and Senate in different versions. A conference committee has been appointed to address these differences.*

## **REAPPORTIONMENT OF THE GENERAL ASSEMBLY**

(See summary under STATE/LOCAL GOVERNMENT)



## UNIFORM STATEWIDE VOTING SYSTEM

The House of Representatives passed and sent to the Senate H.3777, a bill providing for a uniform statewide voting system. The legislation provides that the State Election Commission shall: (1) approve and adopt one voting system to be used by authorities charged by law with conducting elections; (2) support the authorities charged by law by providing training for personnel in the operation of the voting system approved and adopted by the commission; and (3) support all aspects of creating the ballots and the database of this voting system. Under the bill, a vote recorder or optical scan voting system may not be approved for use in the State unless qualified by the National Association of State Election Directors as meeting or exceeding the minimum requirements of the Federal Election Commission's national voting system standards. The legislation provides that the act takes effect upon approval by the Governor and when funding is available to implement the requirements of the legislation.

*STATUS: H.3777 passed the House on May 1, 2003, and was sent to the Senate. On May 29, the Senate amended the bill, read it for the second time, and ordered it to third reading.*

## HEALTH/ELDERLY ISSUES

### ACCESS TO MEDICAL TREATMENT ACT

The House approved H.3191, the "Access to Medical Treatment Act." This bill allows an individual who has an illness or disease that could be life threatening to receive experimental or non-conventional treatment from a licensed doctor. The doctor must personally examine the individual and agree to treat the individual. A legally authorized representative of the individual may also request these types of treatment for the individual. The bill allows the doctor to prescribe alternative or non-conventional medical treatment if the treatment does not pose any unreasonable and significant danger to the person and the patient provides written, informed consent about the treatment as specified in the bill. The bill also provides that treatments administered in compliance with the bill do not constitute medical negligence or misconduct that could lead to disciplinary action by the State Board of Medical Examiners. However, the physician is to be held to the applicable standard of care for any physician providing treatment for a particular disease or condition. The bill prohibits a person from using the terms "physician," "medical doctor," "doctor of medicine," or "surgeon," in connection with his practice unless the person is licensed by the Board of Medical Examiners. The bill makes the unlicensed practice of medicine a felony (currently it is a misdemeanor) and makes

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the practice of naturopathy (except for physicians and surgeons licensed as provided in the bill) a felony instead of a misdemeanor and increases the penalties upon conviction.

*STATUS: H.3191 was approved by the House and is pending in the Senate Medical Affairs Committee.*

## **CIGARETTE TAX**

Whether to increase the tax on cigarettes and use the revenue to provide a reduction in State individual income taxes and/or to fund Medicaid was a major issue this year. As approved by the House, H.3768, the Health and Human Services Reorganization and Accountability Act (see summary this section), did not include a cigarette tax increase.

After approval by the House, H.3768 was referred to the Senate Medical Affairs Committee; recalled from that committee and committed to the Senate Finance Committee; and amended in the Senate Finance Committee to include a 53 cents per pack cigarette tax increase. The Finance Committee's amendment directed that the cigarette tax revenue be used to fund Medicaid and to provide a reduction in State individual income taxes. However, the bill was subsequently recommitted to the Senate Medical Affairs Committee, where it is currently pending consideration.

The Senate Finance Committee's 2003-2004 budget proposal (H.3749) also included a temporary proviso which increased the tax on cigarettes and applied the revenue to fund Medicaid and to provide a reduction in State individual income taxes. However, that proviso was ruled out of order by the President of the Senate, and subsequent Senate-proposed cigarette tax amendments to H.3749 were also unsuccessful.

*STATUS: H.3768 has been recommitted to the Senate Medical Affairs Committee. The Senate Finance Committee's budget (H.3749) proviso which increased the cigarette tax by 53 cents to fund Medicaid and to provide State individual income tax relief was ruled out of order by the Senate President. After protracted debate over several proposals, the final Senate budget plan does not include a cigarette tax increase.*

## **HEALTH AND HUMAN SERVICES REORGANIZATION AND ACCOUNTABILITY ACT**

The House approved H.3768, the "South Carolina Health and Human Services Reorganization and Accountability Act Of 2003." As approved by the House, the legislation reforms the state's Medicaid system, and reorganizes and restructures state health and human services agencies as follows:



- **DEPARTMENT OF HEALTH AND HUMAN SERVICES (DHHS)**

- Policy and Planning of the Continuum of Care of the Governor's Office is transferred to DHHS Office for Services for Emotionally Disturbed Children;
- Children's Case Resolution of the Governor's Office transferred to DHHS Office of Children's Services;
- Licensing and monitoring of out-of-home placements of the Department of Social Services (DSS) moved to DHHS;
- Licensing of out-of-home placements of the Department of Health and Environmental Control (DHEC) moved to DHHS;
- Department of Alcohol and Other Drug Abuse Services (DAODAS) is moved to DHHS as a new Office;
- Inpatient alcohol and drug treatment services of the Department of Mental Health (DMH) are moved to DHHS under the new Office of Alcohol and Other Drug Abuse Treatment Services;
- Inpatient alcohol and drug treatment services of the Department of Vocational Rehabilitation (VR) may be transferred to this Office if certain conditions are met and after submission of a plan to the Joint Legislative Committee (as described below);

- **DEPARTMENT OF MENTAL HEALTH (DMH)**

- DMH becomes a Cabinet Agency;
  - Client and family services of the Continuum of Care transferred to DMH.
- Managed Treatment Services of DSS remain at DSS pending approval of a plan submitted to the Joint Legislative Committee;
  - Budget and Control Board is to assist in implementation of the Act;
  - Health and Human Services agencies must co-locate offices and consolidate programs when possible.

- **DEPARTMENT OF INFORMATION TECHNOLOGY FOR HEALTH AND HUMAN SERVICES AGENCIES**

- Manages and administers all information technology for DSS, DHHS, Department of Disabilities and Special Needs, DMH, VR, DHEC;
- Director appointed by Governor with advice and consent of the House and the Senate;
- Director must develop a coordinated strategic plan for information resources management as provided in the Act.

- **JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON MEDICAID AND HEALTH CARE (the Oversight Committee)**

- Seven appointed members - three of whom must be members of the Senate appointed by the Chairman of the Senate Finance Committee,

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one of whom must be a member of the minority party; three of whom must be members of the House of Representatives appointed by the Chairman of the House Ways and Means Committee, one of whom must be a member of the minority party; and one of whom must be the Governor or the Governor's appointee.

- Charged to study the State Medicaid plan, to review efforts of the state Medicaid agency, and to recommend changes to make the plan more easily understood, more stable, and more affordable.

- **STATE OFFICE OF MEDICAID AND HEALTH CARE AUDITS**

- Established to conduct independent audits, reviews, inspections, and investigations to prevent and detect waste and fraud and to promote accountability, economy, effectiveness, and efficiency;
- Agencies under this office's purview are DSS, DHHS, DDSN, DMH, VR, DHEC, and the Department of Information Technology;
- Audit director appointed by and serves under the Oversight Committee;
- Audit director must report to the Oversight Committee, at least semi-annually, information regarding problems, audit reports, compliance with previous audit recommendation, and status on fraud and abuse activity and annual audit plan.

- **MEDICAID REFORM INITIATIVES**

- Department of Revenue is to implement electronic interface of information systems for eligibility determination;
- DHHS is to report to the Oversight Committee, changes to Medicaid that will have a fiscal impact;
- DHHS is to report to the Oversight Committee the number of beneficiaries on Medicaid who do not pay for services as required by law;
- Department of Insurance is to collect information to help DHHS identify persons on Medicaid who have other insurance;
- DHHS is to prepare cost containment plan when spending exceeds projected General Funds growth;
- DHHS is to implement a Medicaid Mandatory Managed Care Program;
- DHHS is to implement a pilot project to assess the viability of privatizing eligibility determination of Medicaid applicants;
- Establishes a Task Force on Emergency Room Diversion to be led by DHEC;
- DHHS is to enter into contractual agreements for the management and operation of skilled nursing facilities formerly under the jurisdiction of DMH.

- The **NURSING HOME FRANCHISE FEE** of 2002 is repealed;



- The Act establishes the **SOUTH CAROLINA RETIREES AND INDIVIDUALS POOLING TOGETHER FOR SAVINGS (SCRIPTS)** Program to be administered by DHHS.
  - Purpose of the SCRIPTS Program is to combine the purchasing power of State citizens age sixty-five or older (who are not eligible for Medicaid) to reduce prescription drug costs through combined negotiating power for pharmaceutical pricing and rebates;
  - The program would be funded entirely from annual enrollment fees of program participants;
  - DHHS is required: to submit an implementation and administration plan for the program (as described in the bill) to the Oversight Committee by December 30, 2003; to maintain data to allow evaluation of the program's cost effectiveness; and to report to the Governor and the Oversight Committee as provided in the bill.
- **SENIORS FORUM**
  - Established in the Act, with twenty-one voting members;
  - Charged to:
    - Support the Office of Aging of the Department of Human Services;
    - Make recommendations regarding responsibilities and roles for state, regional, and local entities, and services to seniors;
    - Sponsor public forums in advance of submission of the Office on Aging's four-year plan and respond to the Office of Aging's annual draft plan.
- **NURSING HOMES**
  - Requires DHHS to enter into contractual agreements for the management and operation of skilled nursing facilities formerly under DMH.
- **PREVENTION OF YOUTH ACCESS TO TOBACCO**
  - Strengthens laws against underage tobacco purchase and use and sets penalties.
- **TOBACCO SETTLEMENT RECEIPTS AND BONDS**

- Provides for additional receipts from Tobacco Settlement funds to be credited to the general fund rather than being deposited as is currently required;
- Permits the use of tobacco settlement revenues and the proceeds of bonds secured by these revenues to refund or purchase these bonds.

*STATUS: **H.3768** was approved by the House and is pending consideration in the Senate Medical Affairs Committee (also see "Status" under Cigarette Tax, this section).*

## HEARING AID SPECIALISTS

The House approved H.3591, a bill which conforms statutes regarding the practice of specializing in hearing aids to the statutory, organizational, and administrative framework established for professional and occupational boards. The bill includes provisions for the licensure and regulation of hearing aid specialists, including penalties for violations. The bill devolves the powers, duties, functions, and responsibilities of the Department of Health and Environmental Control (DHEC) regarding the "Practice of Specializing in Hearing Aids Act" upon the Department of Labor, Licensing, and Regulation. The bill establishes the Board of Examiners for Hearing Instrument Specialists and Fitters (the Board), comprised of: five hearing instrument specialists, each of whom must have five years or more experience and hold a valid hearing aid specialist license; one licensed otolaryngologist (ear, nose, and throat doctor); and one consumer member. All Board members would be appointed by the Governor with the advice and consent of the Senate. The bill requires that a licensee, before dispensing a hearing aid, must conduct a hearing measurement including pure tone audiometry, speech audiometry, and hearing aid evaluation. The bill requires practitioners to be licensed either as a hearing instrument specialist or as a hearing aid fitter, and the bill provides requirements for each of these designations. The bill allows the Board to issue a temporary permit valid for twelve months and renewable for another twelve months. During the temporary permit period, the bill requires that the permit holder pass a Board-approved examination. The bill includes a grandfather clause for hearing aid dealers who currently are licensed by DHEC. The bill requires that licensed hearing instrument specialists and fitters must receive at least sixteen hours of continuing education every two years. The bill exempts licensed audiologists from licensure by the Board.

*STATUS: **H.3591** was approved by the House and is pending consideration by the Senate Labor, Commerce, and Industry Committee.*



## **SOUTH CAROLINA RETIREES AND INDIVIDUALS POOLING TOGETHER FOR SAVINGS (*SCRIPTS*) PROGRAM**

The House and the Senate have both approved H.3586, a bill which creates within the Department of Health and Human Services (DHHS) the South Carolina Retirees and Individuals Pooling Together for Savings (*SCRIPTS*) Program. This program combines the purchasing power of South Carolina citizens age sixty-five or older who have resided in the State for at least six months and who are not eligible for Medicaid prescription benefits. These citizens would enroll in the program to reduce their prescription drug costs. The bill requires DHHS to combine negotiating power for the program with negotiating power for pharmaceutical pricing and rebates that may exist now or in the future. The bill provides that DHHS will administer the program and will submit a plan for implementation and administration of the program, as described in the bill, to the State Budget and Control Board. Upon review of the Budget and Control Board, the program may be implemented as soon as practicable. The program would be funded entirely from annual enrollment fees collected from program participants.

*STATUS: H.3586 was approved by the House and the Senate and has been enrolled for ratification.*

## **HOMELAND SECURITY**

### **HOMELAND SECURITY DUTIES ASSIGNED TO THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION**

The House approved and sent to the Senate H.3713, a bill that assigns homeland security duties to the South Carolina Law Enforcement Division (SLED). The legislation revises the exclusive jurisdiction and statewide authority of the South Carolina Law Enforcement Division, so as to provide that the division's jurisdiction and authority includes: establishing and operating tactical response law enforcement units; coordinating counter terrorism efforts in or affecting this state; coordinating federal grants associated with homeland security; creating councils associated with its mission; and serving as the Governor's representative to the United States Department of Homeland Security.

*STATUS: H.3713 passed the House and Senate in different versions. On May 27, a conference committee was appointed to address those differences.*

## MARITIME SECURITY

The Senate passed and sent to the House of Representatives the South Carolina Maritime Security Act. This legislation creates the Maritime Security Commission and reestablishes the South Carolina Naval Militia to augment maritime homeland security initiatives.

The legislation creates the Maritime Security Commission composed of ten members: (1) the Chairman of the State Ports Authority, ex-officio, or a member of the State Ports Authority Board, designated by the chairman; (2) the Commander of the South Carolina Naval Militia, ex-officio; (3) a serving chief of police or equivalent from a port community, ex-officio; (4) a serving fire chief or equivalent from a port community, ex-officio; (5) a representative of the South Carolina Department of Natural Resources Law Enforcement Division, ex-officio; (6) the Adjutant General, ex-officio, or his designee, who shall serve as a non-voting member; (7) a representative of the commercial maritime community; (8) a retired U. S. Coast Guard officer, grade O-5 or higher, who supervised federal port security duties as a Captain of the Port; (9) a retired U. S. Navy officer, grade O-6 or higher; and (10) an inactive or retired U. S. Coast Guard Reserve officer, grade O-6 or higher. The four members who are not ex-officio shall be appointed by the Governor with the advice and consent of the Senate. These non-ex-officio members shall be selected from respective lists of retired Navy, Coast Guard, and Coast Guard Reserve officers residing in South Carolina and commercial maritime community members maintained by the Captains of the Port. The chiefs of police and fire chiefs shall be from the port communities and shall rotate annually into the position on the commission.

The legislation reestablishes the South Carolina Naval Militia as an organized, trained, and certified volunteer state maritime force that is regionally aligned to enable appropriate augmentation of federal, state, county, and municipal forces. The Naval Militia may be engaged in any federal response to the threat of terrorism and to the needs of maritime homeland security. The Maritime Security Commission must organize, administer, coordinate, and facilitate the activities of the Naval Militia in order to provide to federal, state, county, and local agencies adequate numbers of trained and qualified personnel with proper accountability and adequate indemnification provisions to enhance maritime homeland security operations. The Commander of the South Carolina Naval Militia shall be a Rear Admiral (O-8) who must be appointed by the commission, commissioned by the Governor, and shall serve a term of four years. The commander will propose other commissions and appointments in accordance with rules promulgated by the commission. Divisions of the Naval Militia will include a division that consists of members of the United States Navy, Marine Corps, and Coast Guard Reserve (federal service takes priority). In addition, the Naval Militia must include a division that consists of the Merchant Marine. The Naval Militia also shall include a staff element and a support division. Naval Militia personnel are entitled to all appropriate honors, courtesies, privileges, and authority provided under state law to state military organizations. This authority shall be exercised only with regard to mission requirements and in accordance with rules promulgated by the commission.



Within the South Carolina Naval Militia, a joint service task force is authorized whose purpose is to determine and coordinate regional security missions relating to those waterways shared with contiguous states and to provide federal and regional interoperability advice and assistance to the commission. This task force shall be appointed and assigned pursuant to rules promulgated by the commission.

The Maritime Security Commission and the Naval Militia must coordinate their activities with federal, state, and local agencies responsible for maritime homeland security and relevant Naval Militia functions including: the State Law Enforcement Division; the Departments of Natural Resources, Public Safety and Transportation and the Military Department, and their several state agencies; state, county, and municipal police departments including marine police components; and the South Carolina Army and Air National Guard.

The legislation also authorizes the South Carolina Law Enforcement Division to promulgate regulations not specifically authorized by the federal government or by another agency, department, or division of state government, which are necessary for the proper administration and enforcement of homeland security measures for maritime protection. Such regulations, including any emergency authority, must be promulgated within the guidelines of the Administrative Procedures Act and after consultation with the Ports Security Committee established by the United States Coast Guard. This regulatory authority ceases upon implementation of the federal Maritime Transportation Security Act regulations, currently scheduled for July 2004.

*STATUS: H.3713 passed the House and Senate in different versions. On May 27, a conference committee was appointed to address those differences.*

## STATE/LOCAL GOVERNMENT

### DEPARTMENT OF COMMERCE EXPENDITURES

The House of Representatives passed and sent to the Senate H.3208, a bill pertaining to oversight of public economic development initiatives conducted by the South Carolina Department of Commerce and the Coordinating Council for Economic Development. This bill provides that monies constituting a fund of any kind used by the Department of Commerce, regardless of their source, are public monies subject to all accountability and disclosure requirements governing public monies. Any exemptions require formal approval by the State Budget and Control Board. The bill requires an annual report of Department of Commerce expenditures to the Governor and the General Assembly that must include an explanation of the specific purpose of each expenditure including recreational or entertainment purposes. The bill provides that funds from foundation grants and private funds

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used by the Coordinating Council for Economic Development to enhance economic growth and development are public monies subject to all accountability and disclosure requirements governing public monies unless otherwise exempted.

The bill revises provisions specifying information that is exempt from disclosure under the Freedom of Information Act, so as to provide that a document reflecting the final financial commitment by a public body is a covered document of, or incidental to, a proposed contractual arrangement and a proposed sale or purchase of property and therefore subject to disclosure as prescribed. The bill provides that a contract related to efforts or activities of a public body to attract or retain business or industry to invest in this state is exempt only until the business or industry publicly announces its project or the council executes a final contract. The bill provides that documentation of efforts or activities of a public body or one acting for a public body to attract or retain business or industry to invest within South Carolina is exempt from disclosure unless the documents relate to the financial commitment by a public body, which documentation loses its exemption once the business or industry has publicly announced its project or the council has executed a final contract. The competitive rates quoted by the South Carolina Ports Authority would also remain exempt from disclosure under the legislation.

*STATUS: **H.3208** passed the House on January 30, 2003, and was sent to the Senate. On March 13, the Senate Labor, Commerce and Industry Committee reported the bill out favorable with amendment. The bill is currently on the Senate statewide second reading calendar.*

## **HEALTH AND HUMAN SERVICES REORGANIZATION AND ACCOUNTABILITY ACT**

(See summary under Health/Elderly Issues)

## **HEARING AID SPECIALISTS**

(See summary under Health/Elderly Issues)

## **LIVESTOCK OR POULTRY STANDARDS - HOG FARMS**

The House approved H.3555, a bill prohibiting a county from imposing livestock or poultry standards that supersede or are more stringent than those established by the General Assembly. Notably, the legislation impacts a county's authority to regulate large-scale hog farming operations. As passed by the House, the bill provides that, beginning January 1, 2003, a county may not enact an ordinance that supersedes or imposes a more stringent standard than standards established by the General Assembly relating to the production of livestock or poultry. Any such



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ordinance enacted on or after January 1, 2003, is null and void. The legislation grandfathers in county ordinances enacted prior to January 1, 2003. The provisions of the bill do not apply to zoning ordinances enacted by a county.

*STATUS: H.3555 was approved by the House. The bill was reported favorable with amendment, minority unfavorable, from the Senate Judiciary Committee and is pending second reading on the Senate calendar with three Senators desiring to be present.*

## LOBBYISTS EMPLOYED BY STATE AGENCIES

The House of Representatives passed and sent to the Senate H.3187, a bill prohibiting state use of an independent contractor lobbyist. The bill provides that it is unlawful for a state agency, authority, or department to directly or indirectly hire or retain an independent contractor as a lobbyist. This provision does not include foundations established by state-sponsored universities or institutions of higher education that do not receive appropriated funds on an annual basis.

*STATUS: H.3187 passed the House on April 24, 2003, and was sent to the Senate where it has been referred to the Judiciary Committee.*

## MINORITY AFFAIRS COMMISSION

The House of Representatives approved and sent to the Senate H.3426, a bill that broadens the scope of the State Commission for Minority Affairs to include minority groups in addition to African Americans. The legislation increases the membership of the commission from seven to nine members by adding two positions appointed by the Governor from the State at-large upon the advice and consent of the Senate. The legislation provides that the minority population served by the commission consists of African Americans, Native American Indians, Hispanics/Latinos, Asians, and others. The legislation expands the duties of the commission to so as to provide that the commission shall: determine, approve, and acknowledge by certification state recognition for Native American Indian entities; establish advisory committees representative of minority groups, as it considers appropriate to advise the board; seek federal and other funding on behalf of the State of South Carolina for the express purpose of implementing various programs and services for African Americans, Native American Indians, Hispanics/Latinos, and other minority groups; and, promulgate necessary regulations including, but not limited to, regulations regarding State Recognition of Native American Indian entities in the State of South Carolina.

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The Senate has approved a version of this legislation. The Senate version contains a provision that nothing in the legislation recognizes, creates, extends, or forms the basis of any right or claim of interest in land or real estate in this State for any Native American tribe which is recognized by the State.

*STATUS: H.3426 passed the House on April 25, 2003, and was sent to the Senate where it was amended on May 29 and given second reading. On May 20, the Senate passed S.51, amended to contain the Commission for Minority Affairs legislation. This bill was sent to the House and referred to the Judiciary Committee.*

## DEPARTMENT OF MOTOR VEHICLES REFORM ACT

The House and the Senate approved S.342, the "Department Of Motor Vehicles Reform Act of 2003."

S.342 removes the Division of Motor Vehicles and the Motor Carrier Services unit from the Department of Public Safety and establishes these divisions as an administrative agency of state government, the South Carolina Department of Motor Vehicles (DMV). The bill provides:

- The Executive Director of the DMV is appointed by the Governor and confirmed by the Senate to serve at the pleasure of the Governor.
- The Legislative Audit Council will review the DMV every three years.
- The DMV is prohibited from hiring additional employees during the ninety day period following the effective date of the bill except with the written approval of the Budget and Control Board (the Board).
- The Board will prescribe the manner in which the transfer of employees, funds, property, etc. will be accomplished; and the Board, in consultation with the appropriate standing committee(s) of the General Assembly, shall provide the manner in which certain transitional provisions of the bill must be implemented where agreement between the Department of Public Safety and the DMV cannot be obtained.
- The Department of Transportation shall have access to certain data and reports maintained by the DMV, including but not limited to collision data and reports and driver records of persons who have applied for employment with the Department of Transportation.
- The DMV must implement Motor Carrier Services in six locations throughout the State within six months following the Governor's approval of the bill.
- An interagency advisory council between the State Transport Police and the Motor Carrier Services is created to make recommendations for a smooth and efficient transition. The bill provides for composition of the council and



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requires that the council make recommendations to coordinate the deployment of a public/private electronic preclearance weight state bypass system, as approved by the General Assembly in 2002.

- The DMV must enter into contracts with public and private entities (including public schools) throughout the State to administer specified portions of the driver's license examination. The DMV must supervise the provision of the services provided in this respect and must supply the appropriate testing materials. The legislation authorizes a private entity to charge a service fee in excess of the testing fee charged by the DMV for the examination.
- The DMV must randomly test driver's license applicants who successfully complete the driver's license examinations to ensure that the driver's license instructors are properly certifying that their students have successfully completed an examination. If through testing or other review procedures, the DMV determines that a contractor is not conforming to the law and applicable regulations it may: suspend the authority under the contract to administer the tests, suspend the contract, or cancel the contract.
- The DMV must randomly test a driver's license applicant only at the time the applicant is seeking his initial license at the DMV.
- The bill requires and provides for male U.S. citizens or immigrants who are less than twenty-six years of age to be registered for the U.S. Selective Service when applying to the DMV for issuance, renewal, or a duplicate copy of a regular or commercial driver's license or an identification card. The DMV will inform such individuals who are less than eighteen years old that submission of an application for a license or identification card serves as a consent to be registered with the Selective Service System upon attaining age eighteen, if required by Federal law.
- The legislation revises procedures for the renewal of driver's licenses. Under the new procedures, the license renewal period for drivers age sixty-five and older will continue to be five years. For other driver's licenses, the renewal period is increased from five years to ten years. During the fifth year of this ten-year renewal schedule, the licensee must either appear in person at a department office to complete a vision screening or submit by mail to the department a certificate from an ophthalmologist or an optometrist. Failure to satisfy the vision-screening requirement incurs a \$50 fine. The fine is waived if the individual completes the requirement within ninety days after the end of the fifth year of a ten-year license.
- The bill provides that the DMV may contract with persons, corporations, or governmental subdivisions to issue license plates and revalidation decals, and a person or corporation may charge a fee in excess of the fee charged by the DMV. A governmental subdivision may charge a one dollar fee.

- The bill increases from ten dollars to fifteen dollars the fee for issuance or transfer of a certificate of title and provides that the first million dollars generated by the five dollar increase must go to the Department of Education for adult education programs, and the remainder must go to the Department of Public Safety for highway patrol programs. The bill further provides that five dollars of the total fee must go to the DMV to defray operational expenses excluding expense related to project phoenix.
- The legislation provides that if a person's license expires, the person may have his license renewed without taking the required road test or a written examination if the person applies for his license within nine months of the expiration of his license.
- The bill also includes provisions regarding persons who provide construction and demolition debris disposal services.
- The bill also authorizes and provides for special license plates for the South Carolina Elks Association.

*STATUS: **S.342** was approved by both the House and Senate and has been enrolled for ratification.*

## **PUBLIC SERVICE COMMISSION**

The House of Representatives and Senate have passed different versions of legislation providing for comprehensive revisions to the Public Service Commission. This legislation establishes new provisions regarding qualifications, screening, and terms of membership for the Public Service Commission, the seven-member body elected by the General Assembly to regulate South Carolina's public utilities. The bill provides that for an election for a term beginning after June 30, 2004, the elected members shall have a high school degree or its equivalent. *The Senate version would require candidates to have a baccalaureate degree or higher.* In screening persons for election to the Public Service Commission for a term beginning after June 30, 2004, the joint committee shall consider the knowledge and experience of the appointees in the following fields: (1) energy issues; (2) telecommunication issues; (3) consumer protection and advocacy issues; (4) water and wastewater issues; (5) finance, economics, and statistics; (6) accounting; (7) engineering; (8) law; or (9) business operation or administration. Under the bill, any member elected at the 2003 election is considered eligible for reelection notwithstanding any other provision of this legislation.

Candidates for election to the Public Service Commission in 2003 must file a Statement of Economic Interest with the State Ethics Commission. The Statement of Economic Interest must also contain a supplemental statement showing all contributions from any person in any amount to support his candidacy for election to the commission in 2002 or 2003. The bill provides that if a family member of a sitting legislator runs for an office which is elected by the General Assembly, the



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member of the General Assembly related to the family member shall abstain from voting for that person. *The Senate version would prohibit a General Assembly member's immediate family member from being elected to the commission while the member serves and for 4 years after he ceases to be a member of the General Assembly or fails to file for reelection.* The bill revises provisions relating to seeking or offering pledges of votes in Public Service Commission elections, so as to prohibit the direct or indirect seeking of a pledge or the offering of such a pledge until after the joint committee has formally released its report as to the qualifications of its nominees to the General Assembly. The bill prohibits membership on and restricts employment by the Public Service Commission of a person associated with a regulated business.

The bill provides for that commissioners are bound by the Code of Judicial Conduct and the State Ethics Act and provides for annual training for commissioners and their employees on ethics and the Administrative Procedures Act. The legislation provides that each commissioner shall devote full time to his duties as a commissioner, and shall not engage in any other employment, business, profession, or vocation during the normal business hours of the Public Service Commission. *The Senate version would prohibit a commissioner from being employed by a public utility for 1 year following his/her service as a commissioner, and provides penalties.*

The bill divides the commission's staff into an advisory staff and an advocacy staff and provides for their responsibilities. The advisory staff shall provide research and technical support to the commission and advice and recommendations to the commission on all matters. The advocacy staff shall represent the public interest of South Carolina before the commission. This representation includes: (a) concerns of the public users and consumers of public utility services, regardless of the class of customer; (b) economic development and job attraction and retention in South Carolina; and (c) preservation of the financial integrity of the state's public utilities and the continued investment in and maintenance of utility facilities.

Under the legislation the Division of Consumer Advocacy of The Department of Consumer Affairs retains its current responsibilities with regard to Public Service Commission matters. *The Senate version would eliminate the Consumer Advocate's duties to represent consumers in public utility matters and would create the Office of Public Staff (OPS), a separate state agency charged with representing the public interest in all proceedings before the commission. It would require physical separation of OPS from the commission.*

The bill prohibits ex parte communications with and by a commissioner or advisory staff in connection with a pending proceeding.

*STATUS: The House and Senate have passed different versions of **S.208**. On April 23, 2003, a conference committee was appointed to address the bodies' differences on the legislation.*

## REAPPORTIONMENT OF THE GENERAL ASSEMBLY

The General Assembly passed S.591, legislation providing for a revised reapportionment plan that reconfigures the districts from which members of the General Assembly are elected. The legislation unifies various split voting precincts and makes relatively minor adjustments to Senate and House districts. The legislation provides that the reconfigured districts must not be implemented prior to the regularly scheduled primary and general elections for 2004. Prior to the 2004 General Election, the districts now provided for by the interim order of the federal three-judge panel in Colleton County Council v. McConnell, 201 F.Supp.2d 618 (2002), continue to apply for purposes of vacancies in office for members of the Senate and House of Representatives.

*STATUS: S.591 passed the General Assembly on May 28, 2003. On June 2, the Governor signed the bill into law.*

## RETIREMENT SYSTEMS CLAIMS PROCEDURE ACT

The House and the Senate both approved S.340, "The South Carolina Retirement Systems Claims Procedures Act." This bill provides procedures that must be applied to disputes between the South Carolina Retirement Systems and the members and member beneficiaries of those systems. The bill requires that any claim brought under these provisions must be prosecuted by the member, the member's designated beneficiary, or an attorney authorized by either of these persons. A claim may not be prosecuted under this bill on behalf of a class. The bill provides procedures for filing written claims with the director of the retirement systems concerning administrative decisions; procedures for filing a request for a contested case hearing of the retirement systems' final decision by the Administrative Law Judge Division (ALJ); and for appeal from the ALJ Division to the Court of Common Pleas. The bill also provides that an employee of the South Carolina Department of Mental Health who meets the requirements for "peace officer" status is included in the definition of "police officer" for purposes of eligibility for membership in the South Carolina Police Officers Retirement System. The bill provides "peace officer" status to employees of the Department of Mental Health whose assigned work location is one of the correctional facilities of the Department of Corrections or the Department of Juvenile Justice.

*STATUS: S.340 (A12) was approved by the Senate and by the House and has been signed by the Governor.*



## RETIREMENT SYSTEM REVISIONS

The House approved H.4008, a bill that makes numerous revisions to the current state retirement system. These revisions include, but are not limited to:

- A revision of the term "earned service" so as to include in that definition service rendered while participating in the State Optional Retirement Program (ORP); the Optional Retirement Program for Teachers and School Administrators (ORPTSA); or the Optional Retirement Program for Publicly-Supported Four-Year and Postgraduate Institutions of Higher Education (Higher Ed ORP) that has been purchased pursuant to specified procedure; or service earned as a participant in the system, the South Carolina Police Officers Retirement System (PORS), the General Assembly Retirement System (GARS), or the Judges' and Solicitors' Retirement System (JSRS) that is transferred to or purchased in the system;
- A provision that a retirement system member's highest fiscal year salary shall include the salary while participating in the ORP, the ORPTSA, or the Higher Ed ORP if the member has purchased service rendered under any of these programs pursuant to specific provisions of the bill;
- A provision that an active member on an approved leave of absence from a participating employer who returns to covered employment within four years may purchase service credit for the approved leave, under specified conditions; currently, there is no time specified for return to employment;
- Provisions regarding an active member's establishment of service credit for periods of service in the ORP, ORPTSA, or the Higher Ed ORP by making payments to the system which are determined by the State Budget and Control Board, but which must be at least sixteen percent of the member's current salary or career highest fiscal year salary, whichever is greater, for each year of credit purchased;
- A provision that earned service previously withdrawn and reestablished, purchased service credit earned as a participant in the ORP, the ORPTSA, or the Higher Ed ORP, or service earned as a participant in the system, the PORS, the GARS, or the JSRS that is transferred to or purchased in the system, is "earned service" and is eligible to be counted toward the required five or more years of service necessary for benefit eligibility;
- A revision of the definition of "eligible employee" so as to add to that definition a person hired on or after July 1, 2003, by specified employers to fill a temporary position or a part-time position; an employee hired after January 1, 2003, by the State who is not covered by the State Employee Grievance Procedure but who is eligible to participate in the South Carolina Retirement System (SCRS) or the PORS;

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- A provision defining "open enrollment period" to mean the period from January first to March first of each year;
- A provision requiring that a State ORP participant who accepts an additional concurrent position with an employer participating in the SCRS must enroll in the State ORP for the second position if the second position is eligible to participate in the State ORP;
- A provision that a member of the SCRS who accepts an additional concurrent position with an employer participating in the SCRS must enroll in the SCRS with respect to that position;
- Elimination of current exceptions to the provision that election to participate in the State ORP is irrevocable, and addition of language providing for a State ORP participant to join the SCRS and addition of a provision that any ORP participant who was a participant in the Higher Ed ORP may irrevocably elect to participate in the SCRS during the open enrollment period from January 1, 2004, to March 1, 2004.

*STATUS: **H.4008** was approved by the House, reported favorable from the Senate Finance Committee, and received second reading from the Senate on May 29. The bill is on the Senate calendar pending third reading with notice of general amendments.*

## SHORTENING THE LEGISLATIVE SESSION

The House of Representatives approved and sent to the Senate two legislative measures that would shorten the time the General Assembly spends in regular session each year. The House passed **H.3207**, a bill that provides for shortening the legislative session by revising the time of annual adjournment. This bill changes the date for the mandatory adjournment of the General Assembly from the first Thursday in June to the second Thursday in May. The bill also provides that in any year that the House of Representatives fails to give third reading to the appropriations bill by March fifteenth, rather than March thirty-first, the date of adjournment is extended by one statewide day for each statewide day after March fifteenth, rather than March thirty-first, that the House fails to give the bill third reading.

The House also approved **H.3209**, a proposed constitutional amendment to shorten the legislative session by revising annual commencement. This joint resolution proposes an amendment to the Constitution of South Carolina, relating to sessions of the General Assembly, so as to provide for annual sessions of the General Assembly commencing at varying times in even-numbered years and odd-numbered years. Under the proposed amendment, the annual session of the General Assembly would convene on the second Tuesday of January in even-numbered years and on the second Tuesday in February in odd-numbered years. The Senate, like the House of Representatives, would meet on the first Tuesday following the



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certification of the election of their respective members for not more than three days following the general election in even-numbered years for the purpose of organizing. Officers of the General Assembly, including the Speaker of the House and the President Pro Tempore of the Senate, and committee chairmen would be selected during the organizational session. During odd-numbered years, the presiding officers of the House and Senate would convene on the second Tuesday in January for not more than two days for the limited purpose of accepting any bills or resolutions introduced by any member and referring them to the appropriate committee. Members of the General Assembly would not receive any compensation for more than forty days of any one session. The proposed amendment provides for other revisions regarding the elimination of certain obsolete language.

*STATUS: H.3207 and H.3209 passed the House on January 29, 2003, and were sent to the Senate where the legislation has been referred to the Judiciary Committee.*

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